



General Regulatory Chamber Guidance note for respondents

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Introduction

1. The General Regulatory Chamber (GRC) is the home for an enormous range of rights of appeal usually from decisions of public authorities who have “regulatory” functions. Typically such regulators will have only a handful of appeals a year. Others, especially those with local responsibilities may have just one appeal every few years. The purpose of this note is to guide respondents through the procedures.

Tribunal staff

2. The GRC is administered by HMCTS staff at two offices.

Leicester address

Arnhem Support Centre (Tribunal)
PO Box 9300
Leicester
LE1 8DJ

0300 123 4504

London address

5th Floor, Rolls Building
7 Rolls Buildings
Fetter Lane
London
EC4A 1NL

0207 947 7422

Most regulators deal with the Leicester office. Transport cases are dealt with at the Rolls Building, London. You will first receive notice of an appeal from one of the case workers who will be your main contact with the Tribunal. At Leicester there is also a legally qualified Registrar who deals with much of the case management.

Staff cannot give you legal advice about individual cases but will do what they can to help with any queries you have.

Tribunal Rules

3. The GRC procedure is governed by a set of Tribunal Rules. They can be found here: www.justice.gov.uk/tribunals/rules

See “The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 S.I. 2009 No. 1976 (L. 20)”

4. It is always important to remember Rule 2:

Overriding objective and parties’ obligation to co-operate with the Tribunal

2.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) using any special expertise of the Tribunal effectively; and
- (e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or
- (b) interprets any rule or practice direction.

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and
- (b) co-operate with the Tribunal generally.

5. It follows that all parties are expected to cooperate with each other and to assist the Tribunal. In turn, you can have confidence that although the Tribunal may be unfamiliar territory for you, no one will be trying to trip you up.
6. The Tribunal is used to hearings at which ordinary citizens present their case on their own. To make sure that proceedings are fair, Tribunal Judges will try to enable both sides to put their case properly. They will try to be flexible, avoid unnecessary formality and deal with cases in a proportionate way. It is for you to decide whether you wish to be legally represented. In the absence of unreasonable behaviour, each side is responsible of their own legal costs.
7. The guidance which follows is necessarily general. Please check jurisdiction specific information at www.justice.gov.uk/tribunals/general-regulatory-chamber for any special rules.

Before an appeal starts

8. When you issue a decision which carries a right of appeal it is your responsibility to tell the recipient about their appeal rights. Typical wording might be:

“You have a right of appeal against this decision to the General Regulatory Chamber (GRC) of the First Tier Tribunal. If you wish to appeal you should do so within 28 days of the date of this letter by writing to (Leicester address).

You can obtain an appeal form from that address or from the tribunal website at (website address).”

9. Sometimes you might be able to predict that an appeal is likely and might have to be dealt with urgently. If so, it makes sense to plan as early as possible for this. See Annex 1.
10. The appellant starts an appeal by sending a letter or form to the Tribunal. If the appeal is received in time then a case worker will send it on to you.
11. If the appeal is out of time then it cannot proceed unless the time limit is extended. If the Registrar or a Judge decides to extend time then the case worker will send you the appeal in the usual way. If you think a Registrar's decision to extend time is wrong you can ask for it to be reconsidered by a Judge. If the delay is short, and has caused you no inconvenience, then the Tribunal may take the view that justice is best served by allowing the appeal to go forward.
12. Once you receive the appeal then the 28 day time limit during which you must send a response starts to run.

Do I always need to prepare a response?

13. There is a risk sometimes that a notice of appeal might trigger a set of procedures that carry on remorselessly to a Tribunal hearing that no one really wants and which doesn't bring satisfaction to anybody. A bit of creative thinking now might save time and money later on. In this connection it is always worth looking at the section of the appeal form which asks the appellant to state the result which they are seeking.
14. There are three common sets of circumstances when you should think twice about whether to prepare a response straight away:
 - (a) Where you agree with the grounds of appeal and consider that your decision should be changed.
 - (b) Where you think the law is such that the appellant has no chance of winning even if what they say is correct.
 - (c) Where you can't really tell from the appeal form what the appellant is getting at either because too little detail is given or too much.

Agreement

15. When you look at what the appellant is saying you may reconsider your position. If you think it more likely than not that the grounds of appeal are correct, you might be able to reach agreement with the other side for the Tribunal to make a consent order.

Strike out

16. Some cases are struck out. This means that they are brought to an end without their being a full Tribunal decision. It happens only in a minority of cases, for example:
 - (a) Where the Tribunal does not have jurisdiction
 - (b) If there is no reasonable prospect of the case succeeding.

If you consider that even if the appellant's case is accepted, their case must lose you can ask the Tribunal to strike the case out. Such an application can be short but should have attached to it any evidence which the Tribunal might need to see to understand what the case is about. You can ask for more time to file the response in case the appeal is not struck out.

Not sure

17. It is possible that you will receive a notice of appeal which gives so little information that you can't really tell what the argument is about. At the other extreme, an appellant might attach so many documents that it seems unfair for you to wade through them in order to reply to his or her case. In either case, it makes sense for you to contact the appellant to ask for clarification. If this doesn't come then you can ask the Tribunal for a direction that the appeal letter be put into good order. If the appellant fails to cooperate, at the end of the road, the Tribunal has power to strike out an appeal if their behaviour is such as to prevent the case being decided fairly and justly.
18. If an appellant has obviously misunderstood the meaning of your decision, it will again make sense to discuss it with them. They might end up being happy with their decision and decide to withdraw the appeal. Alternatively they might be able to clarify exactly what their grievance is and that will make writing the response much easier.

The response

19. The requirements for a response are in Rule 23. It must contain:
 - (a) Your name and address.
 - (b) The name and address of your representative if you have one.
 - (c) The address to which any Tribunal documents must be sent.
 - (d) Whether you want the case to be dealt with at a hearing or would be content for a decision on the papers.
 - (e) Whether you oppose the appeal and if so on what grounds.
 - (f) If the appellant has not yet provided it, a copy of the decision and any statement of reasons for it.
20. You must send one copy of the response to the Tribunal within 28 days and another copy to the appellant.

What is the purpose of a response?

21. A response may be said to have three purposes.
 - (a) To explain to the appellant the case against him or her. So we need simplicity and clarity. The appellant also needs to know of the law which applies to their case.
 - (b) To assist the Tribunal to reach a correct decision. You have an obligation to disclose to the Tribunal all the relevant evidence.
 - (c) To allow you to argue your case. So the Tribunal needs to know the strong points on which you rely.

Preparing the response

22. A good starting point is to ask whether you accept the facts or evidence that the appellant is putting forward. This question of course may lead you to change your decision instead; or it may lead you to ask for the appeal to be struck out if even on the appellant's evidence the appeal must fail.
23. If you decide that you do accept the facts or evidence that the appellant is putting forward then you should say so and then go on to explain why, despite that, you consider that the Tribunal should rule against the appellant.
24. If on the other hand you do not accept what the appellant is saying, it is important for you to explain to the Tribunal which parts you reject it and what other evidence you have to put against his or her case.
25. It is worth developing a system for preparing responses which will minimise the work, if any, needed to prepare a bundle of documents for the Tribunal. You might be able to use the file which you have already assembled. It could be paginated and indexed and have attached to it the notice of appeal and all the evidence on which you rely.
26. In simple cases it would reduce the time taken to hear a case if you could send copies of the bundle, paginated and indexed at the same time as you send your response.

It would be helpful to discuss this with Tribunal staff before the Right of Appeal becomes active.

Case management

27. The appellant then has 14 days in which to reply to your response. Any reply must be sent both to you and to the Tribunal.
28. Sometimes the appeal is now ready to be decided. In more complicated cases the papers may be looked at by the Registrar or a Judge who will give guidance or directions about the evidence or other information which parties must provide. Any party can ask the Judge to make a direction as part of the management of the case.

Decisions

29. If all parties agree the Tribunal can consider the appeal on the papers provided. However, each party has the right to insist on a hearing.
30. When a case is dealt with on paper it means the members of the Tribunal will meet in private to consider the papers, discuss the case between themselves and make a decision. This means that all the arguments have to be put in writing in advance so that they can be considered. The Tribunal then sends out a written decision to the parties. Just occasionally, when the panel meets to look at the papers, it decides that it cannot reach a fair decision without a hearing – in which case the Tribunal will arrange for one to be held.
31. If one or more of the parties wants a hearing then Tribunal staff will fix a date for this after consultation with the parties. They will try to find a Court or Tribunal centre which is convenient for everyone and suitable for any special needs which they have been told about. Parties are not required to attend hearings but it is usually best for them to do so. The Judge will be in charge of the hearing and will ensure that all sides have a fair opportunity to speak. Witnesses may attend to give evidence and answer questions. The Judge will decide whether they should take an oath before doing so. The Judge will also decide whether it is necessary for this kind of evidence to be given and the extent of any questioning, sometimes called cross examination, that should follow.
32. Sometimes it is possible for the Tribunal to tell the parties its decision at the end of the hearing. In any event a full written decision will be sent out to them usually within about two or three weeks.
33. GRC Tribunal decisions are binding on all parties. There is a further right of appeal to the Upper Tribunal but only if there is an error of law in the GRC Tribunal decision. Information about appeals to the Upper Tribunal is sent out with the written GRC decision.

And finally

34. This guidance for respondents has been written to help you when you have to answer an appeal made to the Tribunal.
If you have any further questions, or you are unsure about something within this guidance, please do get in touch. Tribunal staff at Leicester or London will be happy to help or will refer your query on to the Chamber President if needed.

Urgent cases

Information note

1. Of course every case the Tribunal hears is important and it is natural for each individual to want their case to be decided as soon as possible. The urgent cases procedure exists for those exceptional circumstances where, because of the risk of serious loss or harm it is reasonable to ask for an appeal to jump the queue or that an application should be heard very quickly.
2. An example of an urgent application might be a request to suspend the effect of the decision which you are appealing. Some but not all decisions are suspended automatically. Please check the information concerning your appeal and the legislation to find out whether you need to take urgent action. Except in claims management cases, you will probably need to lodge an appeal before the Tribunal can consider an application.
3. Rule 2 of the GRC Rules **requires** parties to help the Tribunal to deal with cases fairly and justly and to **cooperate** with the Tribunal generally.
4. The key to dealing properly with urgent cases is cooperation between the parties – usually the appellant and the regulator.
5. Sometimes, perhaps during a consultation period, it becomes obvious that the Tribunal may be asked to take an urgent decision even before the Regulator's decision is issued. The parties should plan accordingly and give the Tribunal advanced warning.
6. Parties should always ask themselves how much can be agreed.
7. A regulator may be content to suspend the decision under appeal. A suspension is not granted automatically. Appellants must make a case for it. On the other hand regulators have to be realistic if the effect of not granting a stay is in practice to take away the right of appeal then there will be powerful arguments for granting one; the same may be true in cases where the decision under appeal creates a criminal offence.
8. If the parties cannot agree on a general suspension there may still be scope for an interim consent order, limiting the suspension in time and/or attaching conditions.
9. The parties should also try to agree a bundle of evidence and suitable possible hearing dates for any urgent appeal or application.
10. The GRC does not provide a 24 hour service but staff will work quickly to place before a judge for directions applications in an urgent case.
11. Applications should be in writing (by email if possible) and should state:
 - (d) What you are asking for
 - (e) What efforts have been made to agree this with the other side and what common ground exists
 - (f) The reasons for urgency